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EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT PAPER NUMBER

3743

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,409

Applicant(s)

ALTEMUS, ARMIN

Examiner

Annette F. Dixon

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-26 and 30 is/are rejected.
- 7) ☒ Claim(s) 10, 11 and 27-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to **claims 1-30** have been considered but are moot in view of the new ground(s) of rejection.

Response to Interview Summary and Arguments

1. Examiner Dixon and Mr. Trenholm conducted an interview on August 30, 2006, regarding the allowable subject matter in **Claims 1-30**. Examiner Dixon requested that Mr. Trenholm, correct the dependency of **Claim 30** or delete the claim as a substantial duplicate of **Claim 20** (previously objected in the Office Action mailed February 24, 2006), place each and every limitation of **Claims 10** into independent **Claim 1**, cancel **Claims 12-21**, and place each and every limitation of **Claim 27** into independent **Claim 22**. Examiner Dixon informed Mr. Trenholm that a response would be needed by September 1, 2006, at 1 P.M., or else a Final Rejection would be sent using prior art reference Pierpont (U.S. 1,177,208). Mr. Trenholm requested Examiner Dixon enter the changes to the claim by Examiner's Amendment; however, Examiner Dixon informed Mr. Trenholm that the complex nature of the claim language would merit the claims to be modified by the Applicant. As of September 5, 2006 at 8:30 A.M. EST, no claims have been submitted to the Office nor has a complementary copy of the claims been submitted to Examiner Dixon, in an effort to expedite prosecution. Therefore, the final rejection of **Claims 1-30** is set forth in this Office Action.

2. Applicant's arguments with respect to **Claims 1-30**, filed June 26, 2006, have been considered but are moot in view of the new ground(s) of rejection.

Discussion of Prior Art Pierpont (U.S. 1,177,208) in light of Applicant's Invention

3. Pierpont is a respiratory system that provides compressed gas to the patient. Element 1, gas source, is a reservoir that retains oxygen, element 9, bellow, is held to the user's arm by a harness (the combination of elements 12 and 13) and can be compressed and decompressed while in fluid communication with the patient's face mask (24), element 43, bellow, is held to the user's arm by harness (47) and can be compressed and decompressed while in fluid communication with the patient's face mask (24), element 24, mask, having a conduit (20) in fluid communication with elements 9 and 43. The harness system of the Applicant as recited in **Claims 10, 11, and 27-29** is distinct from the prior art, nor does the prior art suggest or fairly teach the recited harness system to be a singular unit interconnecting the two bellows having front and rear straps.

Claim Objections

4. **Claim 30** is objected to because of the following informalities: **Claim 30** is a substantial duplicate of **Claim 20**; therefore, one of these claims must be cancelled or the dependency changed. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1-9, 12-26, and 30** are rejected under 35 U.S.C. 102(b) as being anticipated by Pierpont (U.S. 1,177,208).

7. **As to Claim 1**, Pierpont discloses a respiratory system for providing compressed gas to a patient, the system comprising, a mask (24) adapted to cover the patient's mouth and nose (Figure 1), at least one bellow (9) having an inner chamber (the inner portion of the bellow 9) and an input port (7) and an output port (7) connected thereto, wherein the at least one bellows is compressible by a user such that when being compressed, the at least one bellows exhausts gas out the inner chamber via the output port and wherein the bellows is resiliently expandable such that when the compression has ceased, the at least one bellows expands and draws gas into the inner chamber via the input port (Column 4, Lines 97-106); at least one gas conduit (5) interconnecting the output port of the at least one bellows to the mask (24) such that compression gas is conveyed to the patient via the at least one gas conduit (5) and the mask (24) in response to compression of the at least one bellows (9) by the user; and a harness (the combination of elements 12 and 13) attached to the at least one bellows (9), wherein the harness is sized as to be worn by the user so that the at least one bellows is maintained by the harness in a position adjacent the user's body in proximity to the

Art Unit: 3743

user's armpit, such that the user can compress the at least one bellows without using their hands thereby freeing the user's hands to hold the mask so as to cover the patient's nose and mouth. (Figure 1).

8. **As to Claim 2**, Pierpont discloses a gas source (1) coupled to the input port (via element 7).

9. **As to Claim 3**, Pierpont discloses the gas source (1) comprises a source of compressed oxygen (compression via the compression of gas source).

10. **As to Claim 4**, Pierpont discloses the harness is sized so as to maintain the at least one bellows in a position at a location where the user can compress the at least one bellows between the user's inner upper arm and torso. (Figure 1).

11. **As to Claim 5**, Pierpont discloses the harness is sized so as to maintain the at least one bellows immediately adjacent the user's arm pit. (Figure 1). Please note this limitation is dependant on the size and the extension of the bag.

12. **As to Claim 6**, Pierpont discloses the harness comprises at least one should strap that rests on at least one shoulder of the user so as to support the at least one bellow when the at least one bellow is positioned between the inner upper arm and the torso of the user. The shoulder strap is defined by the connection of element 13 to element 12.

13. **As to Claim 7**, Pierpont discloses the respiratory system comprises two bellows (elements 9 and 43).

Art Unit: 3743

14. **As to Claim 8**, Pierpont discloses the harness is sized so as to maintain the two bellows in a position at a location where the user can compress the two bellows between the user's inner upper arms and torso. (Figure 1).

15. **As to Claim 9**, Pierpont discloses the harness is sized so as to maintain the at least one bellows immediately adjacent to the user's right and left arm pit. (Figure 1).

16. **As to Claim 12**, Pierpont discloses a respirator for a patient administered by an operator comprising: a mask (24) adapted to cover at least a portion of the patient's face (Figure 1), at least one conduit (20) attached to the mask (24) so as to communicate with the mask (24); at least one bellow (9) adapted to be positioned between an arm and torso of the operator and attached to the at least one conduit so as to communicate with the conduit, wherein the at least one bellow can be compressed with a downward motion of the arm towards the torso of the operator so as to force gas from the bellow into the mask via the at least one conduit and decompress with an upward motion of the arm away from the torso of the operator so as to draw gas into the bellow, and wherein the hands-free actuation of the at least one bellow allows the operator to secure the mask to the patient's face with more than one hand; and a harness (the combination of elements 12 and 13) sized so as to be worn by the user, wherein the harness is coupled to the at least one bellows such that when the harness is worn by the user, the at least one bellows is maintained in a position interposed between the arm and the torso of the operator.

Art Unit: 3743

17. **As to Claim 13**, Pierpont discloses the mask (24) comprising a retaining edge (25) that contacts the facial skin of the user (Column 3, Lines 33-39).

18. **As to Claim 14**, Pierpont discloses the hands-free actuation of the bellow allows the operator to firmly press the retaining edge against the facial skin of the patient thereby reducing gas leakage from the mask during compression of the bellows (Figure 1).

19. **As to Claim 15**, Pierpont discloses the conduit (20) comprises a flexible tubing (Column 3, Line 30).

20. **As to Claim 16**, Pierpont discloses the conduit (20) communicates with the mask (24) with a coupling device (22) wherein the coupling device directs gas flowing through the conduit into the mask (24).

21. **As to Claim 17**, Pierpont discloses the gas comprises at least one of air or oxygen. Please note element 1 which is open to receiving oxygen at element 2.

22. **As to Claim 18**, Pierpont discloses the at least one bellow is attached to the torso of the operator with a harness. (Figure 1).

23. **As to Claim 19**, Pierpont discloses the harness is attached to the torso of the operator with a locking device. (Hook 13 is a locking device for attaching the sleeve 12 to the user. The combination of elements 12 and 13 define the harness that acts as a supporting member for bellow 9).

24. **As to Claims 20 and 30**, Pierpont discloses the Pierpont discloses the harness is attached to the torso of the operator with a locking device. (Hook 13 is a locking

device for attaching the sleeve 12 to the user. The combination of elements 12 and 13 define the harness that acts as a supporting member for bellow 9).

25. **As to Claim 21**, Pierpont discloses the at least one bellow comprises a bag or sack with an inner closed cavity, and wherein the bag or sack is formed of a resilient material that can be squeezed into compression so as to force gas from the inner closed cavity and released for decompression so as to draw gas into the inner closed cavity. (Figure 1 and Column 4, Lines 97-106).

26. **As to Claim 22**, Pierpont discloses an air delivery system for a patient administered by an operator comprising: a mask (24) adapted to cover at least a portion of the patient's face; a harness (12) sized to be worn about the torso of the operator; a first bellow (9) attached to the harness such that the first bellow is positioned between the operator's right arm and torso when the harness is worn by the operator, the first bellow having a first conduit attached to the mask so as to communicate therewith, wherein the first bellow can be compressed with a downward motion of the operator's right arm towards the operator's torso so as to force gas from the first bellow into the mask via the first conduit, and wherein compression of the first bellow allows the operator to secure the mask to the patient's face with the operator's right hand; and a second bellow (43) attached to the harness such that the second bellows is positioned between the operator's left arm and torso when the harness is worn by the operator, the second bellow having a second conduit attached to the mask so as to communicate therewith, wherein the second bellow can be compressed with a downward motion of the operator's left arm towards the operator's torso so as to force gas from the second

Art Unit: 3743

bellow into the mask via the second conduit, and wherein compression of the second bellow allows the operator to secure the mask to the patient's face with the operator's left hand. (Column 5, Lines 58-62).

27. **As to Claim 23**, Pierpont discloses the first and second bellows can be independently or simultaneously compressed. (Figure 1).

28. **As to Claim 24**, Pierpont discloses the first bellow can be decompressed with an upward motion of the right arm away from the torso of the operator so as to draw gas into the first bellow. (Column 4, Lines 97-106).

29. **As to Claim 25**, Pierpont discloses the second bellow can be decompressed with an upward motion of the left arm away from the torso of the operator so as to draw gas into the second bellow (Column 5, Lines 58-62).

30. **As to Claim 26**, Pierpont discloses the first and second bellows can be independently or simultaneously compressed. (Figure 1).

Allowable Subject Matter

31. **Claims 10, 11, and 27-29** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

32. **Claims 10 and 11**: The prior art does not teach or fairly suggest the harness arrangement of the claimed invention wherein a front strap is connected between two bellows across the front portion of a user's torso and a rear strap is connected between the two bellows across the rear portion of the user's torso, and wherein the front strap

Art Unit: 3743

comprises a locking device that is detachable and reattachable so as to allow the user to remove the harness. However, the aforementioned claims are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

33. **Claims 27-29:** The prior art does not teach or fairly suggest the harness arrangement of the claimed invention wherein the harness is adapted to be secured to the operator's torso, the harness having a right shoulder strap that rests on the operator's right shoulder a left should strap that rests on the operator's left should, a front strap that crosses the operator's chest, and a rear strap that crosses the operator's back. However, the aforementioned claims are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 3743

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


AFD
September 5, 2006


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